

FILED
In Open Court
NOV 28 2018

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF COCHISE

MARY ELLEN DUNLAP
CLERK OF SUPERIOR COURT
By _____ Deputy

STATE OF ARIZONA,

Plaintiff,

vs.

DAVID F. KASSERMAN,

Defendant(s).

PLEA AGREEMENT

CR 201801080

The State of Arizona and the Defendant hereby agree to the following disposition of this case:

PLEA: The Defendant shall plead guilty or no contest to:

COUNT 1 OF PLEA AGREEMENT

On or about June 17, 2018, **DAVID F. KASSERMAN** committed unlawful discharge of a firearm with criminal negligence, discharging a firearm within or into the limits of any municipality, to wit: fired a handgun within the city limits of Bisbee the first time, in violation of A.R.S. §§13-3107.A, 13-3101, 13-3107.C, 13-3107.D, 13-3105, 13-105, 13-701, and 13-801, a class 6 felony, and amended count 4 of the Direct Information.

The provisions of A.R.S. 13-704 do not apply or are not alleged in this case.

1. **SENTENCING RANGE:** The crime charged in Count 1 of this plea agreement carries a presumptive term of imprisonment in the Department of Corrections of 1 year; a minimum term of .5 year; .33 year if the Court makes a finding of exceptional circumstances; and a maximum term of 1.5 years; 2 years if the Court makes a finding of exceptional circumstances. The maximum fine that can be imposed is \$150,000 plus 83% surcharge. _____
2. **PROBATION:** Probation is available. The term of probation may be up to three years. Whether or not Defendant's sentence is suspended, and Defendant is placed on probation is within the sole discretion of the Court. Unless otherwise stated within the Stipulation/Recommendations Regarding Sentences section of this agreement, there is no agreement the State will recommend, or stipulate Defendant be granted probation. If

granted probation, Defendant can be sentenced up to one year in the County jail as a condition of probation, and probation will be either standard supervision or intensive probation supervision (IPS) unless otherwise stipulated by the parties within this agreement. If granted probation, the terms and conditions thereof are subject to modification at any time during the period of probation in the event Defendant violates any written condition of his probation. Defendant agrees to execute a Waiver of Extradition in connection with any probation revocation proceedings required in the event that his violation of any term or condition of probation, if probation is granted, results in the filing of a Petition to Revoke such probation. Defendant further agrees to reimburse any law enforcement agency for the expense of bringing him back from any other State, County, or Correctional Facility for any proceeding in connection with this case. _____

3. **COMMUNITY SUPERVISION: N/A.** _____

4. **STATUTORY SENTENCING PROVISIONS:**

PROBATION SERVICE FEE \$20.00 _____

TIME PAYMENT FEE \$20.00 _____

LAW ENFORCEMENT ASSESSMENT \$13.00 _____

5. **UNDESIGNATED FELONY:** If Defendant is convicted of a Class 6 Felony not involving the intentional or knowing infliction of serious physical injury or discharge, use, or threatening exhibition of a deadly weapon or dangerous instrument, the Court may place Defendant on probation and refrain from designating the offense as a felony or misdemeanor until probation is terminated. _____

6. **RESTITUTION:** Defendant agrees to pay restitution to all the victims named in the original Indictment or Information, even if they are not named within the specific charge to which Defendant is pleading guilty. Defendant understands he is jointly and severally liable for the entire restitution amount(s). Defendant specifically agrees to make restitution to the victim(s) for losses suffered as a result of the course of conduct of which Defendant may only be a part. Defendant agrees to pay restitution in the total amount to be determined. _____

7. **DEFERRED JAIL TIME:** If Defendant is sentenced to probation, Defendant shall be incarcerated in the Cochise County jail for a period of thirty (30) days. This period of incarceration will be deferred during any and all periods of time during which Defendant is fully compliant with the

terms and conditions of probation. Up to fourteen (14) days at a time of this deferred incarceration may be imposed at any time or times during the term of probation if the Court concludes that Defendant violated any term or condition of probation. Any portion of this deferred incarceration not imposed during the term of probation shall be automatically vacated upon Defendant's successful completion of probation. _____

The Court will determine whether Defendant violated a term or condition of probation based upon a verified Petition filed by the Cochise County Adult Probation Department. Defendant will be provided with a copy of any such Petition and will be provided an opportunity to be heard before the deferred incarceration is imposed. Defendant hereby waives any right he may have to be represented by an attorney when the Court decides whether to impose this deferred jail time. _____

Any violation of probation known to the assigned Adult Probation Officer at the time the deferred incarceration is imposed shall not subsequently be alleged in any Petition to Revoke Probation. _____

This deferred incarceration is in addition to jail time served by Defendant prior to sentencing or imposed by the Court at the time of sentencing. _____

8. **STIPULATION/RECOMMENDATIONS REGARDING SENTENCE:**
The parties stipulate to probation, with no initial jail time. JLC

THE PARTIES STIPULATE TO A FINE IN THE AMOUNT OF \$500.00, PLUS AN 83% SURCHARGE \$415.00 = \$915.00. _____

All other sentencing provisions shall be left to the discretion of the Court.

9. **DISMISSAL OF CHARGES:** The following charges are dismissed or, if not yet filed, shall not be brought against Defendant: counts 1, 2, 3, and 5 of the Direct Information. State will dismiss §13-704 allegation. _____

10. **PLEA DEADLINE:** This plea offer may be withdrawn at any time. _____

11. **PRE-SENTENCE INTERVIEW:** Defendant waives his right to remain silent during the pre-sentence interview. Defendant will honestly answer all questions from the probation officer during that pre-sentence interview, including but not limited to; providing a "Defendant's Version" of the crime and surrounding circumstances, Defendant's history of drug and alcohol use, and Defendant shall participate fully in substance abuse

or other screening and testing as requested by the probation officer. The parties agree that if Defendant does not fully participate in the pre-sentence interview as agreed herein, such failure undermines the Court's ability to assess Defendant's amenability to probation supervision, his potential danger to the community, and to determine what probation services are necessary to rehabilitate Defendant. For these reasons, the parties stipulate that if Defendant does not fully participate in the pre-sentence interview as agreed herein, Defendant shall be sentenced to a term of imprisonment notwithstanding any other provision of this Plea Agreement. _____

12. **PRISON MANDATORY PLEA:** If this is a prison mandatory plea, pursuant to Rule 7.2(c)(1), Defendant shall be taken into custody at the time of the change of plea, whether or not the plea is accepted at that time. If Defendant is already in custody, any release conditions shall be revoked upon completion of the change of plea proceeding, whether or not the plea is accepted at that time. _____
13. **WAIVER OF PROBABLE CAUSE DETERMINATION:** If Defendant is charged with a felony, he hereby gives up the right to a preliminary hearing or other probable cause determination on the charges to which he pleads. In the event the Court rejects the plea, or Defendant withdraws the plea, Defendant hereby gives up his right to a preliminary hearing or other probable cause hearing. _____
14. **POSSIBLE COLLATERAL CONSEQUENCE:** If you are not a citizen of the United States, pleading guilty or no contest to a crime may affect your immigration status. Admitting guilt may result in your deportation even if the charge is later dismissed. Your plea or admission of guilt could result in your deportation or removal, could prevent you from ever being able to get legal status in the United States, or could prevent you from becoming a United States citizen. _____
15. **AMENDMENT OF CHARGES:** This Agreement serves to amend the Indictment or Information to charge the offense to which Defendant pleads without the filing of any additional pleading. However, if the plea is rejected by the Court or withdrawn by either party, or if the conviction is subsequently overturned on appeal, the original charges and any charges that are dismissed by reason of this Plea Agreement are automatically reinstated. _____
16. **WAIVER OF DEFENSES, MOTIONS, ETC.:** Unless this plea is rejected by the Court or withdrawn by either party, Defendant hereby waives and gives up any and all motions, defense objections, or requests which he had made or raised, or could assert hereafter, to the Court's entry of judgment

against him and imposition of a sentence upon him consistent with this Agreement. _____

17. **FINDING OF AGGRAVATING OR MITIGATING CIRCUMSTANCE:** By entering into this Agreement, Defendant agrees that the Court may find any fact used to impose sentence to be true by a preponderance of the evidence, and that the Court is not bound by the Rules of Evidence in determining what evidence to consider. _____
18. **ACCEPTANCE/REJECTION/WITHDRAWAL OF PLEA:** The parties agree that the Court shall accept this plea at the time of Defendant's change of plea. The State's participation in this Plea Agreement is conditioned upon the Court's acceptance of the plea at the change of plea hearing. _____

If, after accepting the plea, the Court concludes that the Agreement is inappropriate for any reason, including but not limited to, an amendment or reduction of the original charges, dismissal of charges, withdrawal of allegations pursuant to A.R.S. §§ 13-703, 13-703(E)-(J) 13-704, 13-705, 13-707(C), 13-708, or 13-901.03, the Court may reject the plea. Should the Court reject the plea, Defendant hereby waives all claims of double jeopardy and all original charges are automatically reinstated.

The parties agree that it is the Court's duty to impose sentence upon Defendant, and that any sentence stipulated to is not binding on the Court. If the Court concludes that any of this Plea Agreement's provisions regarding the sentence or the terms and conditions of probation are inappropriate, it can reject the plea. If the Court rejects the Plea Agreement provisions regarding sentencing, both parties shall be given the opportunity to withdraw from this Agreement. However, if neither the State nor Defendant elects to withdraw from this Agreement, then any sentence stipulated to is not binding upon the Court, and the Court is bound only by the sentencing limits set forth in the applicable statutes. Should the Court reject this Agreement for any reason, or the State or Defendant withdraw from this Agreement, Defendant hereby waives all claims of double jeopardy and all original charges will be automatically reinstated.

Defendant understands that by entering this plea, he may withdraw from the plea only if the Court finds that withdrawal is necessary to correct a manifest injustice. Should Defendant withdraw from this Agreement, Defendant hereby waives all claims of double jeopardy and all original charges are automatically reinstated.

Defendant agrees that if he is charged with or commits a new crime after the entry of the plea, the State may withdraw from this Agreement. If Defendant is charged with or commits a new crime and the State withdraws from this Plea Agreement, Defendant hereby waives all claims of double jeopardy and all original charges are automatically reinstated.

This Agreement is specifically conditioned upon Defendant having no prior felony conviction(s) and the State will not be bound by this Agreement and may withdraw this Agreement if Defendant has (a) prior felony conviction(s). Should the State withdraw from this Agreement, Defendant hereby waives all claims of double jeopardy and all original charges are automatically reinstated.

This plea is specifically conditioned upon Defendant having no mental health condition or mental defect, whether such condition(s) raise competency questions pursuant to Rule 11, insanity pursuant to A.R.S. section 13-502, the need for a diagnostic evaluation pursuant to Rule 26.5, or any other mental health condition or mental defect issue. If it comes to light that Defendant has any mental health issues or mental defects, or that a mental health diagnosis or evaluation of Defendant is needed or desirable, the State shall have the right to withdraw from this Plea Agreement, in which case all of the original charges will be reinstated and Defendant hereby waives all claims of double jeopardy.

19. **DISPOSAL OF EVIDENCE:** Defendant understands that by entering into this Plea Agreement, he waives notice of disposition of evidence in the possession of any law enforcement agency seized or otherwise obtained for use in this case and any case dismissed according to the terms of this Agreement. Defendant agrees that such evidence may be disposed. Defendant further understands and agrees that in the event this case or any case dismissed according to the terms of this Agreement goes to trial, the evidence may not be available and the State will not be required to introduce such evidence. Nothing in this Agreement prohibits either party from photographing, reproducing, describing, recording, etc. evidence for any future use, including trial.
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20. **FORFEITURE OF PROPERTY:** This Plea Agreement does not affect in any way any action to forfeit Defendant's property pursuant to A.R.S. §§ 13-2314, 13-3413 or 32-1993, or under § 13-4301 *et. seq.*, including any action that may be based on facts that gave rise to the Indictment or Information, whether such action is presently pending or filed hereafter.
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If a deadly weapon, dangerous instrument or explosive was used, displayed or unlawfully possessed during the commission of any offense charged in the Indictment or Information or contained in this Plea Agreement, Defendant forfeits all ownership interests in the deadly weapon, dangerous instrument or explosive, and that article shall be sold, destroyed or otherwise properly disposed. _____

WAIVER OF RIGHTS

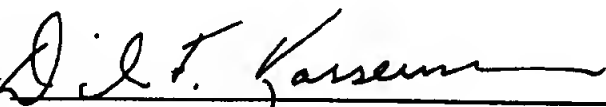
I understand that by pleading guilty or no contest in a non-capital case I will waive the right to have the appellate courts review the proceedings by way of direct appeal, and I may seek review only by filing a Petition for Post-Conviction Relief pursuant to Rule 32 in this Court and, if denied, a Petition for Review. _____

I understand that by pleading guilty I will be giving up the following constitutional rights: (a) The right to trial by jury; (b) The right to have a jury determine beyond a reasonable doubt any fact used to impose sentence within the range set forth above including aggravating circumstances in accordance with A.R.S. §§13-702(A), (B) and (C), 13-703, 13-703(E)-(J), 13-704, 13-708, 13-901.03 and 13-709.03; (c) The right to the assistance of an attorney at trial, and to be appointed an attorney, to be furnished free of charge, if I cannot afford one; (d) The right to confront the witnesses against me and to cross-examine them as to the truthfulness of their testimony; (e) The right to present evidence on my own behalf and to have the State compel witnesses of my choosing to appear and testify; (f) The right to remain silent and to be presumed innocent until proven guilty beyond a reasonable doubt; (g) The right to a direct appeal. _____

I agree to enter my plea as indicated above on the terms and conditions set forth herein. _____

I have read and understand the above. I have discussed the case and my constitutional rights with my lawyer. _____

I have personally and voluntarily signed the signature line below to indicate I read and approved all of the previous paragraphs in this Agreement, both individually and as a total agreement.

Defendant  Date 11/28/2018
DAVID F. KASSERMAN
Defendant

I have discussed this case with my client in detail and advised him of his constitutional rights and possible defenses. I believe that the plea and disposition set forth herein are appropriate under the facts of this case. I concur in the entry of the plea as indicated above and on the terms and conditions set forth herein.

Defense Counsel Michael J. Blom Date 11/27/18
Attorney for Defendant

I have reviewed this matter and concur that the plea and disposition set forth herein are appropriate and are in the interests of justice.

Prosecutor Lori A. Zucco Date 11/28/18
Chief Criminal Deputy County Attorney

Revised October 23, 2012